

ALIBI

The defendant has raised an alibi. He contends that he could not have committed the charged crime because he was elsewhere at the time of its commission.

[Add where appropriate:

In evaluating alibi testimony, keep in mind that a witness has no civic or moral obligation to volunteer information about an alibi to law enforcement authorities.

You may, however, consider the witness' failure to come forward with such information earlier than he/she did only insofar as that failure is inconsistent with his/her alibi testimony at this trial, and casts doubt upon the truthfulness of that testimony.^{1]}

Although the defendant raised the alibi, the defendant has no burden to prove it. In fact, even if you find that the alibi is false, you must not for that reason alone find the defendant guilty. To do that would be to shift the burden of proof from the People to the defendant. The People are required to prove beyond a reasonable doubt on all the evidence presented that the defendant was the person who committed the crime and therefore was not elsewhere at the time of its commission.²

To prove that, the People may rely upon the evidence they offered to establish beyond a reasonable doubt that the defendant committed the crime. The People are not required to present additional evidence that independently proves that the defendant was not where he/she claims to have been at the time of the crime.

Thus, if you find from the evidence that the People have proven beyond a reasonable doubt that the defendant committed a crime charged, you may find from the same evidence that the People have proven beyond a reasonable doubt that the defendant was not elsewhere at the time of its commission.

If you are not satisfied that the People have proven beyond a reasonable doubt that the defendant was the person who

committed the crime, then you must find the defendant not guilty.

1. This charge may be given if the appropriate foundation has been laid. See *People v. Dawson*, 50 N.Y.2d 311, 321 n.4 and 322-323 (1980).

2. Where the People have presented independent proof that the alibi is fabricated, a consciousness of guilt charge may be authorized. See *People v. Leyra*, 1 N.Y.2d 199, 208-209 (1956); *People v. Russell*, 266 N.Y. 147, 153 (1934).